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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SEQUAL TECHNOLOGIES, INC.,

12 Plaintiff,

13 vs.

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15
16 MICHAEL STERN and DIGIFLO, INC.,

17 Defendants.
18

CASE NO. 10cv2655 DMS (NLS)

**ORDER (1) DENYING
DEFENDANTS' MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION, (2)
DENYING DEFENDANTS'
MOTION TO TRANSFER, AND (3)
DENYING DEFENDANTS'
MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM**

[Docket No. 11]

19 This case comes before the Court on Defendants' motion to dismiss for lack of personal
20 jurisdiction, or in the alternative, motion to transfer venue, or in the alternative, motion to dismiss for
21 failure to state a claim. Plaintiff filed an opposition to the motion. Defendants did not file a reply. For
22 the reasons set out below, the Court denies Defendants' motion to dismiss for lack of personal
23 jurisdiction, denies Defendants' motion to transfer and denies Defendants' motion to dismiss for failure
24 to state a claim.

25 **I.**

26 **BACKGROUND**

27 Plaintiff SeQual Technologies, Inc. ("SeQual") and Defendants Michael Stern and DigiFLO, Inc.
28 are former business partners in the field of oxygen concentrator technology. In August 2010, Stern and

1 DigiFLO filed a complaint against SeQual in the United States District Court for the Western District
 2 of Washington alleging a claim for infringement of United States Patent Number 5,627,323 (“the ‘323
 3 Patent”). That case is currently pending before that court.

4 On December 22, 2010, SeQual filed the present complaint against Stern and DigiFLO alleging
 5 claims for infringement of United States Patent Number 5,593,478 (“the ‘478 Patent”) and United States
 6 Patent Number 5,730,778 (“the ‘778 Patent”). In response to the present complaint, Stern and DigiFLO
 7 filed the present motion.

8 II.

9 DISCUSSION

10 Stern and DigiFLO move the Court to dismiss this case for lack of personal jurisdiction. In the
 11 alternative, they move the Court to transfer this case to the Western District of Washington. As a final
 12 alternative, they move for dismissal of SeQual’s complaint for failure to state a claim. SeQual disputes
 13 each argument.

14 A. Personal Jurisdiction

15 Federal Circuit law applies to the personal jurisdiction inquiry in this case. *Nuance*
 16 *Communications, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1230 (Fed. Cir. 2010), *pet. for cert.*
 17 *filed*, No. 10-1019, 79 U.S.L.W. 3480 (Feb. 10, 2011), (citing *Akro Corp. v. Luker*, 45 F.3d 1541, 1543
 18 (Fed. Cir. 1995)). Under that law, “[p]ersonal jurisdiction over an out-of-state defendant is appropriate
 19 if the relevant state’s long-arm statute permits the assertion of jurisdiction without violating federal due
 20 process.” *Id.* (quoting *3D Systems Inc. v. Aarotech Labs., Inc.*, 160 F.3d 1373, 1376-77 (Fed. Cir.
 21 1998)). “Because California’s long-arm statute is co-extensive with federal due process requirements,
 22 the jurisdictional analyses under California law and federal law are the same.” *Id.* (citing
 23 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004)). That analysis asks
 24 “whether the defendant purposefully established ‘minimum contacts’ in the forum State.” *Id.* at 1230-
 25 31 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)).

26 There are two ways of establishing minimum contacts. The first is through general jurisdiction,
 27 “which requires that the defendant have ‘continuous and systematic’ contacts with the forum state and
 28 confers personal jurisdiction even when the cause of action has no relationship with those contacts.”

1 *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1200 (Fed. Cir. 2003) (citations omitted). The
 2 second way to find minimum contacts is through specific jurisdiction, which is “based on activities that
 3 arise out of or relate to the cause of action, and can exist even if the defendant’s contacts are not
 4 continuous and systematic.” *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1017 (Fed.
 5 Cir. 2009) (citing *Silent Drive*, 326 F.3d at 1200). “The Federal Circuit applies a three prong test to
 6 determine if specific jurisdiction exists: (1) whether the defendant purposefully directed activities at
 7 residents of the forum; (2) whether the claim arises out of or relates to those activities; and (3) whether
 8 assertion of personal jurisdiction is reasonable and fair.” *Nuance*, 626 F.3d at 1231 (citations omitted).

9 Plaintiff asserts that personal jurisdiction exists under either of these tests. Because the parties
 10 have not conducted any jurisdictional discovery, Plaintiff “need only make a prima facie showing of
 11 jurisdiction.” *Id.* (citing *Trintec Industries, Inc. v. Pedre Promotional Products, Inc.*, 395 F.3d 1275,
 12 1282 (Fed. Cir. 2005)). If Plaintiff’s factual allegations are uncontroverted, the court must accept them
 13 as true for purposes of determining jurisdiction. *Id.* If the facts are disputed, the court must resolve
 14 those disputes in Plaintiff’s favor. *Id.*

15 Looking at specific jurisdiction first, Plaintiff alleges Defendants “offered for sale in this district
 16 products containing the technology alleged to be infringing the claims of SeQual’s patents.” (Compl.
 17 ¶ 6.) Specifically, Defendant Stern sent an e-mail to Timothy Coonan at SeQual regarding “Flow rate
 18 sets concentrator valve timing control - OCSC[.]” (Decl. of Peter Armstrong in Supp. of Opp’n to Mot.
 19 to Dismiss, Ex. 5.) In that e-mail, Defendant Stern announces that Defendant DigiFLO is releasing a
 20 new version of its concentrator sensor, or OCSC. (*Id.*) The e-mail includes a link to DigiFLO’s
 21 website, and pricing for the new product. (*Id.*) That e-mail satisfies the first prong of the specific
 22 jurisdiction test, namely activity purposefully directed at the forum state. *See Sitrick v. Freehand*
 23 *Systems, Inc.*, No. 02 C 1568, 2002 WL 31443128, at *3 (N.D. Ill. Oct. 30, 2002) (finding distribution
 24 of sales brochures in the forum state satisfies the first prong for specific jurisdiction); *Int’l Truck and*
 25 *Engine Corp. v. Dawson Int’l Inc.*, 216 F.Supp.2d 754, 760-61 (N.D. Ind. 2002) (stating “where specific
 26 advertisements are purposefully circulated to residents of the forum state, a defendant has purposefully
 27 availed itself to suit in the forum state.”)

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1 The second prong of the specific jurisdiction inquiry asks whether the claim arises out of or
 2 relates to the activity in the forum state, which in this case is Defendants' e-mail. Plaintiff's claims
 3 allege infringement of two patents by the "making, using, offering for sale, importing, and/or actively
 4 inducing others to use ... ambulatory oxygen systems and/or constituent components thereof[.]" (Compl.
 5 ¶ 9.) Defendants' e-mail constitutes an offer for sale of one of these products, *see 3D Systems, Inc. v.*
 6 *Aarotech Labs., Inc.*, 160 F.3d 1373, 1378-79 (Fed. Cir. 1998), and thus the second prong of specific
 7 jurisdiction is satisfied.

8 The final prong of specific jurisdiction asks whether the exercise of personal jurisdiction would
 9 be fair and reasonable. This factor:

10 applies only sparingly. When a defendant seeks to rely on the "fair play and substantial
 11 justice" factor to avoid the exercise of jurisdiction by a court that otherwise would have
 12 personal jurisdiction over the defendant, "he must present a compelling case that the
 presence of some other considerations would render jurisdiction unreasonable."

13 *Nuance*, 626 F.3d at 1231 (quoting *Burger King*, 471 U.S. at 477). Here, Defendants do not offer any
 14 evidence or argument as to why or how the exercise of personal jurisdiction over them would be unfair
 15 or unreasonable. Thus, this factor does not defeat Plaintiff's showing that the exercise of specific
 16 jurisdiction is proper.

17 In light of the Court's consideration of these factors, Plaintiff has made a prima facie showing
 18 that specific jurisdiction exists in this case.¹ Accordingly, Defendants' motion to dismiss for lack of
 19 personal jurisdiction is denied.

20 **B. Motion to Transfer**

21 As an alternative to dismissal for lack of personal jurisdiction, Defendants move to transfer the
 22 present case to the United States District Court for the Western District of Washington. Defendants do
 23 not cite the legal basis for this request, but it appears to be based on 28 U.S.C. § 1404(a). That statute
 24 provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may
 25 transfer any civil action to any other district or division where it might have been brought." 28 U.S.C.
 26 § 1404(a). The moving party bears the burden of establishing these factors weigh in favor of transfer.

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 28 ¹ Because the Court finds it may exercise specific jurisdiction over Defendants, it does not
 address the issue of general jurisdiction.

1 *Shropshire v. Fred Rappoport Co.*, 294 F.Supp.2d 1085, 1095 (N.D. Cal. 2003) (citing *Decker Coal v.*
 2 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)); *Florens Container v. Cho Yang*
 3 *Shipping*, 245 F.Supp.2d 1086, 1088 (N.D. Cal. 2002) (citing *Commodity Futures Trading Comm’n v.*
 4 *Savage*, 611 F.2d 270, 279 (9th Cir. 1979)).

5 Defendants here devote less than one page of their brief to discussing the factors under §
 6 1404(a). They simply assert that it would be more economical for the parties and the courts to litigate
 7 this case in the Western District of Washington since the parties are already litigating another case in
 8 that court. This assertion, however, does not warrant a convenience transfer. Indeed, Defendants ignore
 9 that the cases involve different patents held by different companies, as well as different accused
 10 products. Under these circumstances, Defendants have failed to show that transfer to the Western
 11 District of Washington is appropriate.

12 **C. Motion to Dismiss**

13 Finally, Defendants move to dismiss the Complaint in its entirety for failure to state a claim. To
 14 survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to
 15 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937,
 16 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
 17 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
 18 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

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 20 “Determining whether a complaint states a plausible claim for relief will ... be a context-specific
 21 task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 1950
 22 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007)). In *Iqbal*, the Court began this task “by
 23 identifying the allegations in the complaint that are not entitled to the assumption of truth.” *Id.* at 1951.
 24 It then considered “the factual allegations in respondent’s complaint to determine if they plausibly
 25 suggest an entitlement to relief.” *Id.* at 1951.

26 Here, Defendants assert Plaintiff has failed to allege the elements of its claims for patent
 27 infringement because (1) it failed to identify how the patents in suit “read on” the accused products, (2)
 28 it failed to explain how the elements of the patent claims are found in the accused products, (3) it failed

1 to allege Defendants were on notice of the patents in suit, and (4) Plaintiff failed to allege that it marked
2 its products with its patent numbers. (Mem. of P. & A. in Supp. of Mot. at 9.) However, Defendants
3 fail to cite any authority that requires these elements, or this level of detail, be provided in a complaint
4 for patent infringement. Indeed, the Federal Circuit has specifically refuted that the patentee must
5 include each element of the patent claims in its complaint. *See McZeal v. Spring Nextel Corp.*, 501 F.3d
6 1354, 1357 (Fed. Cir. 2007) (“a plaintiff in a patent infringement suit is not required to specifically
7 include each element of the claims of the asserted patent.”) Thus, this argument does not warrant
8 dismissal of Plaintiff’s Complaint.

9 Defendants’ only other arguments in support of their request for dismissal go to the merits of
10 Plaintiff’s claims, not whether Plaintiff has satisfied the pleading requirements. (*See* Mem. of P. & A.
11 in Supp. of Mot. at 10-12.) Accordingly, the Court denies Defendants’ motion to dismiss the Complaint
12 for failure to state a claim.

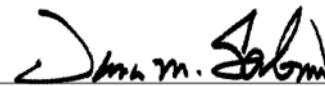
13 III.

14 CONCLUSION

15 For these reasons, the Court denies Defendants’ motion to dismiss for lack of personal
16 jurisdiction, denies Defendants’ motion to transfer venue and denies Defendants’ motion to dismiss for
17 failure to state a claim.

18 **IT IS SO ORDERED.**

19 DATED: April 4, 2011

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21 HON. DANA M. SABRAW
22 United States District Judge
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